

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition causally related to the compensable factor of her federal employment.

FACTUAL HISTORY

On August 5, 2016 appellant, then a 45-year-old stamp fulfillment services clerk, filed an occupational disease claim (Form CA-2) alleging occupational stress due to continued bullying, physical contact, and being annoyed by a coworker at work. She noted that she first became aware of her condition and its relationship to her federal employment on July 12, 2016. Appellant also stopped work on that date.

In a certification of healthcare provider report dated August 3, 2016, Dr. Bruce A. Kauk, an attending Board-certified internist, provided a diagnosis of post-traumatic stress disorder (PTSD) due to threats by a coworker. He placed appellant off work due to the recurrence of her PTSD condition.

By development letter dated August 18, 2016, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. By separate letter of the same date, OWCP requested that the employing establishment provide a copy of appellant's job description and physical requirements of the job, and discuss her ability to perform the required duties. It afforded both appellant and the employing establishment 30 days to submit the requested evidence.

The employing establishment submitted a copy of appellant's official position description and listed the physical requirements of the position.

In an attending physician's report (Form CA-20) dated August 22, 2016, Dr. Kauk noted the date of injury as February 3, 2016. He reiterated his diagnosis of PTSD and checked a box marked "yes," indicating that the diagnosed condition was caused or aggravated by the February 3, 2016 employment activity. Dr. Kauk explained that appellant had severe conflict with a coworker. In the remarks section, he noted that she was at high risk for recurrent PTSD.

On September 1, 2016 appellant responded to OWCP's development questionnaire. She alleged that she was bumped twice in the back by a coworker's shoulder and arms while working on the pick line. Appellant further alleged that she was bullied and intimidated by the coworker and scared of her. She called appellant derogatory names, cut in front of her while they were walking, talked loudly about her to other employees, threatened her with physical harm, and stared at her. Appellant reported these incidents and the coworker's employment was terminated, but she later returned to work and the incidents continued to occur. She and the coworker were told to stay away from one another.

In a September 19, 2016 letter, a manager of operations for the employing establishment, indicated that on most days appellant performed her required duties except when a coworker was in the same area/building. Her panic attacks would start, which made it hard for her to concentrate

on her work. The manager related that appellant had no conduct problems and that she performed to the best of her ability until she had panic attacks and worried about her coworker's whereabouts.

In a September 12, 2016 Form CA-20 report, Dr. Kauk noted July 12, 2016 as the date of injury. He restated his diagnosis of PTSD and checked a box marked "yes," indicating that the diagnosed condition was caused or aggravated by the July 12, 2016 employment activity. Dr. Kauk explained that appellant's diagnosed condition was due to a severe, life-threatening conflict with a coworker.

In consultation notes dated September 28, 2016, Dr. Sunita S. Muranjan, an attending Board-certified psychiatrist, noted that appellant had reported being bullied by a coworker at work and her resultant emotional symptoms. She examined appellant and diagnosed PTSD.

Dr. Kauk, in a letter dated September 29, 2016, noted that appellant's history dated back to an incident in which she was harassed and ultimately physically assaulted by an employee at work. The offending employee was discharged from work, but was later rehired. Dr. Kauk related that appellant presented to his office extremely distressed, unable to sleep, paranoid about darkness and being alone, and extremely anxious. He maintained that she had absolutely no previous history of anxiety disorder, PTSD depression, or other psychiatric issues. Dr. Kauk further maintained that appellant had fairly typical panic attack type symptoms with severe anxiety difficulty breathing, extreme fear dreamer, sweating headache, dizziness, and insomnia.

In Form CA-20 reports dated September 21 and October 11, 2016, Dr. Muranjan restated his diagnosis of PTSD and checked a box marked "yes," indicating that the diagnosed condition was caused or aggravated by the July 12, 2016 employment activity. She explained that this incident made appellant more anxious and easily paranoid.

Dr. Kauk, in a Form CA-20 report dated October 10, 2016, again noted July 12, 2016 as the date of injury. He reported a history of injury that appellant had been verbally, psychologically, and physically harassed by a coworker for the past 18 months. Appellant had anxiety, panic, paranoid ideations, sleep disturbance, flashbacks, and relieved the trauma. Dr. Kauk again checked a box marked "yes," indicating that the diagnosed condition was caused or aggravated by the July 12, 2016 employment activity. In the remarks section, he indicated that appellant had flashbacks and recent PTSD.

In Form CA-20 reports dated October 12 and 18, 2016, Dr. Selina Sanchez, a licensed psychologist, indicated July 12, 2016 as the date of injury. She reported a history of injury that appellant had been verbally, psychologically, and physically harassed by a coworker for the past 18 months. Appellant had anxiety, panic, paranoid ideations, sleep disturbance, flashbacks, and relieved the trauma. Dr. Sanchez diagnosed PTSD. She checked a box marked "yes," indicating that the diagnosed condition was caused or aggravated by the July 12, 2016 employment activity. In the remarks sections, Dr. Sanchez noted that appellant had severe anxiety and fear, flashbacks, difficulty relaxing and or going to sleep, no desire to leave her house, activity withdrawal, panic attacks, afraid that someone was following her, sleep disturbances, and nightmares.

In reports dated October 19 and November 8, 2016, Dr. Muranjan reiterated her diagnosis of PTSD and also diagnosed appellant as having acute PTSD.

Dr. Kauk, Dr. Sanchez, and Dr. Muranjan, in Form CA-20 reports dated September 2, October 8, 19, and 27, and November 10, 14 and 22, 2016, all reiterated their diagnosis of PTSD and checked a box marked “yes,” indicating that the diagnosed condition was caused or aggravated by the July 12, 2016 employment activity. Dr. Kauk explained that appellant had severe life-threatening conflict with a coworker. He indicated that she had flashbacks and recurrent PTSD in the remarks section. Dr. Sanchez explained that appellant was at work at the time of the activity and reiterated appellant’s emotional symptoms. Dr. Muranjan explained that appellant was easily paranoid about anything and she had worsening anxiety.

In a December 9, 2016 letter, a senior operations manager for the employing establishment, acknowledged that appellant was shoulder bumped by a coworker on the pick line at work on January 14, 2016. Based on an investigation of the incident, the employing establishment issued a notice of removal to the offending employee on February 5, 2016. The offending employee, however, returned to work on May 9, 2016 after the notice of removal was reduced to a long-term suspension as a result of the grievance process. Both appellant and the coworker were instructed to stay away from each other.

By decision dated January 6, 2017, OWCP denied appellant’s occupational disease claim for a stress-related condition. It found that the January 14, 2016 incident was a compensable factor of her federal employment. However, OWCP found that the medical evidence of record was insufficient to establish causal relationship between appellant’s diagnosed emotional condition and the accepted employment factor.

Appellant continued to submit additional medical evidence. Dr. Kauk, Dr. Muranjan, and Dr. Sanchez, in Form CA-20 reports dated December 7, 14, and 15, 2016, and January 10, 2017 and a narrative report dated January 10, 2017 again diagnosed PTSD and indicated with a checkmark their agreement that the diagnosed condition was caused or aggravated by the July 12, 2016 employment activity. Dr. Sanchez explained that appellant was harassed at work. Dr. Kauk restated that appellant experienced a severe life-threatening situation. Dr. Muranjan reiterated that appellant had increased anxiety and was easily paranoid about anything. The physicians also reiterated appellant’s emotional symptoms in the remarks section. Dr. Muranjan also remarked that she had a trigger (similar situation) which worsened her symptoms. Appellant was angry, irritable, and anxious.

In letters dated January 5 through August 2017, Dr. Sanchez noted her treatment of appellant commencing on October 12, 2016 following several incidents of psychological, emotional, and physical harassment by a coworker at work. She also noted that appellant presented for therapy with symptoms such as, hypervigilance, intrusive memories of the bullying episodes, flashbacks, extreme fear of leaving her home, irritability, fear of being followed or hurt again, anhedonia, difficulty falling and staying asleep, and nightmares, which were indicative of a diagnosis of PTSD. Dr. Sanchez addressed appellant’s ongoing therapy for her condition.

In a February 26, 2017 narrative report, Dr. Sanchez noted that she was aware of the accepted January 14, 2016 compensable employment factor. She opined that the accepted employment incident and other prior incidents exacerbated and heightened appellant’s symptoms of PTSD. Dr. Sanchez explained that her conclusion was based on her time spent in one-on-one clinical interview with appellant, where appellant described in specific detail the January 14, 2016

employment incident and other incidents of harassment. She maintained that the work incident accelerated her already preexisting trauma endured from being harassed at work. Dr. Sanchez related that no specific work restrictions were required, however, it would not be healthy for appellant to return to her place of employment if the alleged perpetrator of the harassment was present.

In Form CA-20 reports dated August 10, 16, 17, and 29, and September 9 and 13, 2017, Dr. Sanchez, Dr. Muranjan, and Dr. Kauk again diagnosed PTSD and checked a box marked “yes” indicating their agreement that the diagnosed condition was caused or aggravated by the July 12, 2016 employment activity.

On November 29, 2017 appellant, through counsel, requested reconsideration of OWCP’s January 6, 2017 decision and submitted additional evidence in support of her claim.

In a work capacity evaluation psychiatric/psychological conditions (Form OWCP-5a) dated February 27, 2017, Dr. Sanchez noted that appellant was competent to perform her usual job, but she was unable to work eight hours a day if the offending employee still worked at the employing establishment.

In a letter dated April 10, 2017, Dr. Sanchez clarified her statement regarding appellant’s work capacity, noting that she was unable to return to work at that time due to her continued difficulty managing her fear and anxiety related to the harassment endured while employed at the employing establishment. She maintained that appellant experienced fear and anxiety (intrusive fearful thoughts, racing heart, hypervigilance, disturbing memories/flashbacks, *etc.*) when trying to ascertain her return to work. Dr. Sanchez, therefore, concluded that appellant currently remained unable to return to work.

OWCP subsequently received a November 16, 2017 report in which Dr. Muranjan reiterated her diagnosis of PTSD.

By decision dated December 12, 2017, OWCP denied modification of its January 6, 2017 decision, finding that the medical evidence submitted was insufficient to establish causal relationship between appellant’s diagnosed emotional condition and the accepted employment factor.

On March 1, 2018 appellant, through counsel, requested reconsideration. She submitted progress notes from Dr. Sanchez regarding the treatment of her PTSD in therapy sessions on intermittent dates from October 11, 2016 through February 10, 2018.

Appellant also submitted an October 12, 2016 initial evaluation report in which Dr. Sanchez noted that appellant was referred to her for review by Dr. Kauk and Dr. Muranjan. She related that appellant presented with psychological difficulties, which included severe anxiety and fear following harassment by a coworker at work. Dr. Sanchez diagnosed PTSD on Axis I, occupational, social, and interpersonal on Axis IV, and a global assessment functioning score of 50 on Axis V. She reported no diagnosis on Axis II.

In a February 18, 2018 narrative report, Dr. Sanchez noted that appellant had reported her emotional reactions to the January 14, 2016 employment incident several times during therapy

session. She opined that based on her clinical interview and direct behavioral observation, it was clear that the accepted work incident had significantly contributed to appellant's psychological and emotional distress or diagnosis of PTSD. Dr. Sanchez noted her continuing symptoms of psychological trauma, which included hypervigilance, hyperarousal, re-experiencing traumatic events, avoidance, intrusive fearful thoughts and memories, irritability, difficulty concentrating, anhedonia, lack of motivation, difficulty sleeping, and general sense of foreboding.

By decision dated May 30, 2018, OWCP denied modification, finding that the medical evidence submitted was insufficient to establish causal relationship between appellant's diagnosed emotional condition and the accepted January 14, 2016 compensable employment factor.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.⁵ However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁷ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁸ In determining

³ *Supra* note 2; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *See David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁶ *See Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁷ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *See William H. Fortner*, 49 ECAB 324 (1998).

whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.¹⁰ This burden includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹¹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹³

ANALYSIS

The Board finds that the employee has not met her burden of proof to establish an emotional condition causally related to the compensable factor of her federal employment.

Dr. Sanchez provided reports dated February 26, 2017 and February 18, 2018 which diagnosed PTSD. She opined that appellant's emotional condition was causally related to the accepted January 14, 2016 compensable employment factor. However, Dr. Sanchez did not provide medical rationale explaining how the accepted employment factor caused or contributed to the diagnosed emotional condition. A mere conclusion without the necessary rationale explaining how work activities could result in the diagnosed conditions is insufficient to meet the employee's burden of proof.¹⁴ Thus, the Board finds that Dr. Sanchez's reports are insufficient to meet appellant's burden of proof.

Dr. Kauk's August 3, 2016 report diagnosed PTSD. He opined that the diagnosed condition was caused by emotional physical threats made against appellant by her coworker.

⁹ See *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹¹ See *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹² See *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹³ *Id.*

¹⁴ See *P.B.*, Docket No. 17-1912 (issued December 28, 2018).

While Dr. Kauk's opinion generally supports causal relationship, he did not specifically attribute the diagnosed condition to the accepted January 14, 2016 compensable employment factor. Moreover, he did not provide his medical reasoning as to how emotional physical threats would cause or contribute to the diagnosed condition. Therefore, Dr. Kauk's opinion is not sufficiently well-reasoned to establish causal relationship in this case.¹⁵

In their CA-20 form reports, Dr. Kauk, Dr. Muranjan, and Dr. Sanchez diagnosed PTSD. The physicians attributed the diagnosed condition to the verbal, psychology, and physical harassment of appellant by her coworker. The Board finds that the Form CA-20 reports of Dr. Kauk, Dr. Muranjan, and Dr. Sanchez are of no probative value because they did not relate the diagnosed emotional condition to the accepted January 14, 2016 compensable employment factor.¹⁶ In fact, none of the physicians mentioned the January 14, 2016 compensable employment factor in the above-noted reports.

The remaining reports of Dr. Muranjan, Dr. Kauk, and Dr. Sanchez noted a history of injury as physical and emotional harassment of appellant by a coworker. The physicians diagnosed PTSD and addressed appellant's work capacity, but failed to offer an opinion as to whether the diagnosed condition and resultant inability to work were caused or aggravated by the accepted compensable employment factor.¹⁷

For these reasons, appellant has not met her burden of proof to establish an emotional condition causally related to the accepted factors of her federal employment.

On appeal counsel contends that Dr. Sanchez's February 26 and April 10, 2017 and February 18, 2018 reports are well rationalized and establish that appellant sustained an emotional condition due to the accepted January 14, 2016 compensable employment factor. However, for the reasons noted above, Dr. Sanchez failed to explain with medical rationale how the accepted compensable employment factor caused or aggravated appellant's diagnosed emotional condition. Thus, her reports are insufficient to establish an emotional condition caused by the accepted compensable employment factor.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the compensable factor of her federal employment.

¹⁵ See *D.R.*, Docket No. 15-1185 (issued October 8, 2015).

¹⁶ See *L.C.*, Docket No. 08-1655 (issued April 2, 2009).

¹⁷ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board